Thank you for your consideration of the need to change the MassSave background check framework. We are proposing the Fair Chance Hiring background check principles. Fair Chance matches categories of job situations to categories of offenses. We believe this method protects customers and the utilities and opens access to jobs in a responsible way. 1,300,000 people in Massachusetts have left-over CORIs but have never been convicted of anything. Many CORIs are decades in the past. We know from our conversations with contractors that the current broad exclusion leads contractors to refrain from even trying to be certified by MassSave.

Finally, and importantly, after Fair Chance PRINCIPLES are adopted, and BEFORE any implementation, there is an entire process of matching categories of job situations to categories of offenses. This process will allow the utilities to have significant influence over the specifics of the new system.

I have attached our Background Paper on Fair Chance Hiring.

Thank you.

Weezy Waldstein

Action for Equity

Background Paper
Principles and Models for Effective and Inclusive MassSave Background Checks

Prepared by Action for Equity, Browning the Green Space and the Coalition for CORI Climate Inclusion

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*Action for Equity and Browning the Green Space are wri9en into **The Massachusetts 2025-2027 Energy Efficiency and Decarbonization Plan** to work with the PAs to increase inclusion in MassSave programs. The new principles to be developed in this process are to be defined by January 2026 for later implementation.*

All members of the Coalition for CORI Climate Inclusion (C3I) have experience with the ways having a CORI can limit a person's opportunities for a lifetime. We have seen this in the services and programs we provide and in our lived experience. We saw how the new principles and models for effective, inclusive MassSave background checks could both meet employer needs and open opportunities to those now excluded.

Action for Equity, Browning the Green Space, and other C3I members have prepared this background paper to offer expert analysis, legal guidance, and our own experience.

In this paper, we are focused on the principles and models of a new system, rather than the impacts of the current system on the people or communities that are excluded. These principles and model are often called "Fair Chance Hiring".

An enormous number of people are impacted by the current background check exclusion[1]

1.7 million people in Massachusetts have CORIs out of a population of 7.1 million. But just 425,000 people have convictions. A person can have a CORI for an offense from decades before or for something someone else did while borrowing their car. Having a CORI just shows a correlated interaction, not what it was for or if the person was judged guilty in any way.

Using CORIs to exclude people from opportunities is known to disproportionately impact Black and brown people and communities[2]

"Anti-Black racism, and racial discrimination more broadly, in the criminal legal system is both well documented and staggering." Black people are imprisoned at 5 times the rate of

[1] The Massachusetts Second Chance Sealing Gap Colleen Chien, Alyssa Aguilar, Sima Kassianik, Navid Shaghaghi, Rutuja Pathade, Shaunak Chaudhary, Shubham Sinde, Massachusetts, 2023.

[2] Fair Chance Hiring For Employers Part One: Understanding the Importance of Fair Chance Hiring, Beth Avery, National Employment Law Project, April 2023. Research Supports Fair Chance Policies, National Employment Law Project, April 2024.

white people. “Fair Chance Hiring For Employers Part One” provides a long list of citations documenting this.

Using broad CORI exclusions that keep Black and brown people from benefiting from the very program they are paying into embeds discriminatory structures into a public program. It is inappropriate anywhere, but particularly unacceptable in a public program.

We challenge the assertion that broad CORI-exclusions in hiring protect employers and others from risk.[3]

The data show that risk from negligent hiring is significantly less than is asserted or believed. Risk is actually limited by doing effective background check procedures that appropriately match specific situations of a job to an applicant’s specific background.

“Over a 48-year period, only approximately 435 trial court decisions held employers liable for negligent hiring…” These primarily occurred in cases in which the employer’s vetting process was not comprehensive.[4] They paid out liability claims without a court order in just 2,262 cases. This is for all employers.

In contrast, the Equal Employment Opportunity Commission (EEOC) receives roughly 100,000 discrimination complaints annually. This stark difference highlights that negligent hiring claims are exceedingly rare compared to discrimination claims, suggesting that employers should weigh the much higher risk of discrimination actions when assessing potential liability. This responsible hiring should include following recommendations from US EEOC that enforce anti-discrimination laws. Following this guidance protects employers and others from liability from state and local anti-discrimination laws, while minimizing risk of liability from hiring an unsuitable employee. “The job performance expectations for background screening personnel must now extend in both directions. Not only must[5] they ensure that new hires are a fit, but they must ensure that qualified applicants are not unfairly excluded…”

EEOC guidance leads to best practices that underpin Fair Chance Hiring, including considering only convictions and pending prosecutions and only those relevant to the specific job and only recent enough to indicate a significant risk.

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[3] Second Chance Employment: Addressing Concerns About Negligent Hiring Liability, Legal Action Center, National Workrights Institute, 2023. EEOC Prohibited Employment Policies/Practices. Best Practice Standards: the Proper Use of Criminal Records in Hiring, Lawyers Committee for Civil Rights Under the Law, 2013.

[4] Second Chance Employment: Addressing Concerns About Negligent Hiring Liability, Legal Action Center, National Workrights Institute, 2023.

[5] Fair Chance Hiring For Employers Part Six: Shifting Background Screening Goals from Exclusion to Inclusion, Beth Avery, National Employment Law Project, April 2023.

EEOC Prohibited Employment Policies/Practices also specifies that hiring decisions must not be made based on stereotypes or assumptions.

What is Fair Chance Hiring?[6]

Fair Chance Hiring descriptions typically include categories of records that should not be considered including non-convictions, sealed or expunged records, juvenile, petty offenses, misdemeanors, and felonies over 5 years old. It requires assessing the nature of the offense and time passed since the offense and the nature of the job to determine the relevance of the offence to the job.

When reviewing the job, consideration needs to be given to the specific duties and key functions, the circumstances—such as supervision—and where it is performed. For example, having access to a customer's home is a hiring risk factor, but if the resident is not there such as in deep retrofit projects, the risk is then for theft, instead of injury and so requires a different background check.

There is extensive experience in implementing Fair Chance Hiring to look to.[7]

The cited document "Research Supports Fair Chance Policies" provides an extensive list and assesses the policies as effective. It also includes a citation for Johns Hopkins Hospital whose policies informed Prophetic Resistance Boston's work with Mass General Hospital to establish new procedures.

The recent Boston Globe article "City to review jobs that need criminal background checks"[8] is about a case in which a "Fair Chance"-type system allows for modifications over time. Both Action for Equity and Prophetic Resistance Boston have experience with major employers establishing new "Fair Chance"-type background check systems.

The initial state gaming law prohibited anyone with any CORI from working on casino property. As the two Class A casinos were starting to hire, they realized they could not hire enough local people. Action for Equity[9] led a state-wide effort, with the support of the Massachusetts Gaming Commission and both casinos, to allow the Gaming Commission to set up a "Fair Chance"-type system. Thousands of positions were assessed. Some were determined to still need full check by the Gaming Commission. Some were identified as

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[6] Fair Chance Hiring For Employers Part One: Understanding the Importance of Fair Chance Hiring, Beth Avery, National Employment Law Project, April 2023. Best Practice Standards: the Proper Use of Criminal Records in Hiring, Lawyers Committee for Civil Rights Under the Law, 2013.

[7] Research Supports Fair Chance Policies, National Employment Law Project, April 2024.

[8] "City to review jobs that need criminal background checks", The Boston Globe, Niki Criswold, September 2, 2025.

[9] hSps://www.ac,on4equity.org/jobs-equity.html
hSps://www.ac,on4equity.org/uploads/1/2/6/3/126323714/briefing_paper_3_1st_results_8.2.19.pdf

needing specific checks, such as for financial issues for someone counting money. Thousands of positions were identified as exempt from state background oversight.

Prophetic Resistance Boston played a similar role with Partners Brigham and Women's Hospital, looking first at Johns Hopkins's experience. Hospitals are now experienced in focusing on "vulnerable populations" roles as needing special background check.

Next steps

We appreciate the view that there is a need for increased inclusion. There is also both substantial experience and practical grounding for how to move towards that increased inclusion. Neither asserting a company's desire for complete legal insulation from risk or asserting customer perception or preference both without evidence and potentially based in embedded animus are enough to justify the current exclusion.

It is time to open a discussion on how to move forward. We believe this starts with agreeing to general "Fair Chance" principles and framework and also taking no steps to enact additional exclusionary procedures at this time. With these principles in place, all stakeholders, including the ratepayers who now fund the program, can move to the next steps of applying the principles to MassSave's policies.